IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 19 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMED AIJAR MOHAMED HANIF QURESHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 19 of 2003

MR MM TIRMIZI for Petitioner No. 1

Mr S J Dave, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 19/02/2003

ORAL JUDGEMENT

This is a revision application challenging the order dated 25.10.2002 recorded by the learned Judicial Magistrate First Class (3rd Court) at Vadodara in Station

Diary Entry No.74/2002 and CR No. II 138/2002 of Varnama police station under which the learned Magistrate allowed the application of the petitioner and directed that the muddamal be handed over to the petitioner on condition of furnishing solvent surety and P.R. of Rupees One lakh.

2. By the said order, the learned Magistrate also directed that if the muddamal turns out to be cow mutton as per the FSL report, the petitioner will be required to deposit an amount of Rupees One lakh. It is further stated that in case there is any dispute about the muddamal, the petitioner will be required to pay the aforesaid surety amount in the court. Feeling aggrieved by the second part of the order, the petitioner has filed this revision application. It has been contended that ordinarily muddamal article is handed over to a particular person on certain conditions and one of the conditions may be that if at the end of the trial, the muddamal turns out to be of a particular nature, then the party concerned may be required to pay the amount stated in the order. In the present case we find that the trial court has directed that in case the muddamal is found to be cow mutton as per the FSL report, the petitioner will be required to deposit the amount of Rupees One Lakh. After hearing the learned Advocate for the petitioner and the learned APP, it is found that the said condition is required to be modified to the extent that the petitioner would be required to deposit the amount of Rupees One lakh, if at the end of the trial, the muddamal is found to be cow mutton. The reason is that the FSL report will also be required to be scrutinised by the trial court and at that time, it would be an opportunity to be given to the petitioner to challenge the said report also. Therefore, it would not be just, legal and proper to insist on deposit of Rupees One Lakh simply on the basis of FSL report. However, if ultimately it is found that the muddamal is cow mutton, naturally, the petitioner will be required to deposit Rupees One lakh. Even learned Advocate for the petitioner also does not dispute the said proposition.

3. For the foregoing reasons, this revision application is allowed. The condition imposed by the trial court "that the petitioner would be required to deposit Rupees One Lakh, if on the basis of FSL report the muddamal is found to be cow mutton", is ordered to be modified so as to read as under:

"In case at the end of the trial, the trial court finds that the muddamal is cow mutton, then the petitioner shall deposit an amount of Rupees One

lakh within seven days from the date of the order of the trial court."

This revision stands disposed of accordingly. Rule is made absolute. D.S. permitted.

19.2.2003 [D P Buch, J.]
msp